Ex'rs, 78 Mo. 245. See also *New Orleans, etc. R.* v. *Jopes*, 142 U. S. 18, 27. The employer's duty which is violated in these cases is one based on the existing relationship. *Delaware, etc. R.* v. *Trautwein*, 52 N. J. L. 169, 19 Atl. 178; *Chicago, etc. R.* v. *Flexman, supra*. See also *Gillespie* v. *Brooklyn Hts. R.*, 178 N. Y. 347, 352, 70 N. E. 857, 859; 28 HARV. L. REV. 620. The justification for imposing such an enlarged responsibility is found in the large degree to which the public in such situations surrender the care of their persons during periods of particular danger. *Hayne* v. *Union St. Ry.*, 189 Mass. 551. See also *Clancy* v. *Barker*, 71 Neb. 83, 92, 98 N. W. 440. The true basis of the decision in the principal case must be along the lines of the doctrine just laid down. If so, it is an extension into what the court recognizes as private business of a relational responsibility hitherto confined to public service enterprises. But see *Dickson* v. *Waldron*, 135 Ind. 507, 35 N. E. 1. If it is recognized that the true test for such extension is the degree of danger and bodily surrender in each situation, there is no reason why this should not be done. It becomes then a question of fact and policy rather than of law. Thus, see *Clancy* v. *Barker*, 71 Neb. 83, 101, 98 N. W. 440; *Clancy* v. *Barker*, 131 Fed. 161, 165, 166, 172; *Rahmel* v. *Lehndorff*, 142 Cal. 681, 76 Pac. 659.

CONFLICT OF LAWS — EFFECT AND PERFORMANCE OF CONTRACTS — APPLICATION OF FRENCH MORATORIUM TO A CONTRACT TO BE PERFORMED IN ANOTHER COUNTRY. — A bill of exchange was drawn and accepted in France, payable in New York. The holder sues on it in New York, after it is due according to its terms, but before it is due under the French moratorium. *Held*, that the bill is not due. *Taylor* v. *Kouchakji*, 56 N. Y. L. J. 813.

The authorities on what law governs the validity of a contract are in great confusion. Probably the most prevalent rule makes it depend on the intention of the parties. *Hamlyn & Co.* v. *Talisker Distillery*, [1894] A. C. 202. According to another line of cases the validity is governed by the law of the place of performance. *Douglass* v. *Paine*, 141 Mich. 485, 104 N. W. 781. Still a third rule makes it governed by the law of the place where the contract is made. *Carnegie* v. *Morrison*, 2 Met. (Mass.) 381. Theory as well as convenience would seem to support this last rule. See Joseph H. Beale, "What Law Governs the Validity of a Contract?" 23 HARV. L. REV. 1. For the same reasons, matters relating to performance should be governed by the law of the place of performance. *Abt* v. *American Trust Savings Bank*, 159 Ill. 467, 42 N. E. 856. *Contra*, *Jacobs* v. *Credit Lyonnais*, 12 Q. B. D. 589. So the sufficiency of the presentation and notice of dishonor of a negotiable instrument is to be determined by the law of the place where it is payable. *Hirschfeld* v. *Smith*, L. R. 1 C. P. 340; *Pierce* v. *Indseth*, 106 U. S. 546. *Contra, Amsinck* v. *Rogers*, 189 N. Y. 252, 82 N. E. 134. A moratorium does not affect the validity of any obligation. It simply says that the right to have payment on a certain date according to contract is a right to have payment only at a later date, according to law. It should therefore affect only such obligations as are to be performed in the jurisdiction which issues the moratorium. *Roquette* v. *Overman*, L. R. 10 Q. B. 525. If a moratorium is regarded merely as affecting the remedy, *i. e.*, if the time of payment, both by contract and law, is the date agreed upon, but action for a breach is delayed, the principal case is the more clearly wrong, as such a question must surely be determined by the law of the forum. *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329, 339. It seems pretty clear, however, that a moratorium affects the right of payment and not merely the remedy for a breach of such right.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — NON-RESIDENT HUSBAND BRINGING ACTION IN STATE ALLEGED TO BE SEPARATE RESIDENCE OF WIFE. — In an action for divorce brought by the husband the jurisdiction of

the court was grounded on the alleged residence of the wife, and the residence of the husband was not pleaded. A demurrer based on lack of jurisdiction of the cause of action was sustained below. *Held*, that the judgment be affirmed. *Aspinwall* v. *Aspinwall*, 160 Pac. 253 (Nev.).

In England a wife is generally denied the possibility of a separate domicil. *Yelverton* v. *Yelverton*, 1 Sw. & Tr. 574. There is, however, a tendency away from the strict rule. See *Niboyet* v. *Niboyet*, 4 P. D. 1; *Swathatos* v. *Swathatos*, [1913] P. D. 46. In America a separate domicil for purposes of divorce is readily given to the wife. *Ditson* v. *Ditson*, 4 R. I. 87; *Cheever* v. *Wilson*, 9 Wall. (U. S.) 108. A few cases have permitted a separate domicil of a wife for purposes other than divorce. *Shute* v. *Sargent*, 67 N. H. 305; *Matter of Florance*, 61 N. Y. Sup. Ct. Rep. 328; *Gordon* v. *Yost*, 140 Fed. 79; *McKnight* v. *Dudley*, 148 Fed. 204. However, cases giving the wife a separate domicil seem to require that she leave her husband for good cause. See *Suter* v. *Suter*, 72 Miss. 345, 349, 16 So. 673, 674; *Kendrick* v. *Kendrick*, 188 Mass. 550, 555, 75 N. E. 151, 152. Applying this test to the principal case makes it appear that the husband must prove his own misconduct in order to make possible the separate domicil of the wife. This in turn defeats his action for divorce. It may perhaps be said that the wife's domicil when she sues for divorce need not depend upon having left her husband for good cause. See *Williamson* v. *Osenton*, 232 U. S. 619, 625. Such a rule would be advantageous, for in its absence a divorce decree may be overthrown on collateral attack on the ground of lack of jurisdiction, whenever a court takes a different view of the merits. But a domicil good for one purpose only is difficult to conceive and would seem to be nothing more than a privilege granted the wife on account of the necessity of the situation. Whether full faith and credit would be due a decision based on a jurisdiction of privilege only, is rather doubtful. But clearly, even under this view, the husband should not be allowed to make use of this privilege. The court seems to rely somewhat on a statute as requiring residence on the part of the moving party, but it is not clear that this is the meaning of the statute. See REVISED LAWS OF NEVADA, 1912, § 5838. Also *cf.* the principal case with *Smith* v. *Smith*, 15 D. C. 255.

CONFLICT OF LAWS — RIGHT TO RECOVER FOR MENTAL ANGUISH DUE TO NEGLIGENT NON-DELIVERY OF INTERSTATE TELEGRAM — APPLICATION OF INTERSTATE COMMERCE ACT. — Due to the negligence of the defendant telegraph company, a telegram sent by the plaintiff's husband from New Mexico was not delivered at its destination in Texas. The plaintiff, joining her husband, brought suit in Texas to recover for the mental anguish she suffered therefrom. *Held*, that she cannot recover. *Western Union Telegraph Co.* v. *Smith*, 188 S. W. 702 (Tex. Civ. App., 1916).

The plaintiff, as beneficiary of the telegram, notice of which was given the company by its context, is a proper party to maintain, independently, an action thereon for negligent non-delivery. *Sherrill* v. *Western Union Tel. Co.*, 109 N. C. 527, 14 S. E. 94; *Western Union Tel Co.* v. *Morrisson*, 33 S. W. 1025 (Tex. Civ. App., 1896). The court in the principal case accepted the proposition as proven, that the law of New Mexico does not allow recovery for mental anguish. But recovery for such injury is allowed in Texas. *Stuart* v. *Western Union Tel. Co.*, 66 Texas 580, 18 S. W. 351. There are at least three distinct views as to which state's law should govern. Many jurisdictions, conceiving the action to be *ex contractu*, hold with the principal case that the law of the place where the contract was made must govern. *Johnson* v. *Western Union Tel. Co.*, 144 N. C. 410, 57 S. E. 122; *Reed* v. *Western Union Tel. Co.*, 135 Mo. 661, 37 S. W. 904. Others hold that the law of the place of performance governs. See MINOR, CONFLICT OF LAWS, §§ 153, 160. Of the states taking this view, at least one regards the performance as being entirely within the state